IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 10 of 2005
Date of Decision: 23.03.2007

M/s Emco Ltd.

.....Petitioner through
Mr. Naresh Markanda,
Advocate

versus

Uttar Haryana Bijli Vitran Nigam Ltd. etc.

.....Respondents through
Mr. Narender Hooda,
Advocate

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Vijender Jain, Chief Justice (Oral)

Learned counsel for the petitioner has contended that there is an admitted arbitration clause 24 of the agreement which reads as under:-

> *" All matter, questions, disputes, differences, and/or claims arising out of and/or in connection and/or in consequences or relating to this contract whether or not obligations of either or both parties under this contract be subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed shall be referred to the Sole Arbitration of the Chairman or an Officer appointed by the Chairman or an Officer appointed by the Chairman as his nominee. The Award of the Arbitrator shall be final and binding on the parties to this contract.*
>
> *The objection that the Arbitrator has to deal with the matters to which the contract relates in the course of his duties or he has expressed his views on any or all of the matters in dispute or difference, shall not be considered as a valid objection.*
>
> *The Arbitrator may from time to time with the consent of parties to the contract, enlarge the time for making the Award. The venue of arbitration shall be the place from which the acceptance of offer is issued or such place as the Arbitrator in his discretion, may determine.*
>
> *Subject to the aforementioned provisions, the provisions of the Arbitration Act, 1940 and the Rules thereunder any statutory modifications thereof for the time being in force, shall be deemed to apply to the Arbitration proceedings under this Clause."*

It is also admitted case of the parties that the petitioner invoked the aforesaid arbitration clause and the respondents supplied the vacancy by appointing a Director Operation as an Arbitrator. However, it seems that the Arbitrator though concluded the proceedings on 8.11.2004, but did not

make the award and as the award was not made by the Arbitrator, the petitioner wrote to the respondents vide letter dated 01.12.2004 Annexure P-2, requesting, inter-alia,to nominate an Arbitrator for concluding the long drawn case. Inspite of the said letter, the vacancy was not supplied by the respondents. The petitioner filed this petition on 23.02.2005.

Learned counsel appearing for the respondents has contended that vacancy was supplied on 6.6.2005. Once the petitioner had written a letter for supplying of the vacancy to the respondent on 01.12.2004, the respondents have lost the right to supply the vacancy, as the respondents failed to do so within stipulated period.

As the respondents have lost the right to supply the vacancy, I appoint Hon'ble Justice (Ms.) Kiran Anand Lall, a retired Judge of this Court, to adjudicate the dispute between the parties. The Arbitrator shall fix her own fee.

Parties are directed to appear before the Arbitrator on 27.04.2007 at 4.00 P.M.

The petition stands disposed of.

Intimation regarding appointment of as an Arbitrator in this petition be sent to Hon'ble Justice (Ms.) Kiran Anand Lall, a retired Judge of this Court, forthwith.

(VIJENDER JAIN)
CHIEF JUSTICE

23.03.2007
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